

Remarks

Claims 13, 15, 20, 21, 23-25, 27-30 and 43-58 were pending in the subject application. Submitted herewith is a Request for Continued Examination (RCE) under 37 CFR §1.114 for the subject application. Applicant gratefully acknowledges the Examiner's withdrawal of the rejection of claims under 35 USC §102(b) as anticipated by Lin *et al.* (1998) and Seidman *et al.* (1984) as indicated in the Office Action dated April 11, 2008. By this Amendment, claims 13, 20, 23, 25, 28-30, 45, and 52-58 have been amended, claims 15, 44, 46, and 47 have been cancelled, and new claims 59-62 have been added. Support for the amendments and new claims can be found throughout the subject specification and in the dependent claims as currently pending. Entry and consideration of the amendments presented herein is respectfully requested. Accordingly, claims 13, 20, 21, 23-25, 27-30, 43, 45, and 48-62 are currently before the Examiner for consideration. Favorable consideration of the pending claims is respectfully requested.

The Abstract of the Disclosure had been objected to on the ground that the Abstract does not commence on a separate sheet. Applicant indicated that the Abstract of the Disclosure was submitted on a separate sheet (as page 39 of the specification) with the Preliminary Amendment dated October 4, 2005. Applicant also confirmed that the Abstract of the Disclosure is in the image file wrapper (IFW) on the U.S. Patent Office's Patent Application Information Retrieval (PAIR) system. Applicant gratefully acknowledges the Examiner's withdrawal of the objection in the Advisory Action dated September 8, 2008.

The specification had been objected to on the grounds that new matter was added to the disclosure in regard to the sequences by Applicant's Amendment dated January 7, 2008. In addition, claims 13, 15, 20, 23, 25, 27-30, and 43-58 had been rejected under 35 USC §112, first paragraph, as lacking sufficient written description on the grounds that the specification fails to describe the newly submitted SEQ ID NO:5 as now claimed. As noted in Applicant's remarks in the Amendment dated August 11, 2008, there is support in the specification for the 29 amino acid sequence as SEQ ID NO:5 in the sequence listing and, thus, the Amendment dated January 7, 2008 did not introduce new matter into the application. Applicant gratefully acknowledges the Examiner's withdrawal of the

objection of the specification and the rejection under 35 USC §112, first paragraph, in the Advisory Action dated September 8, 2008.

Claims 13, 28, 29, 30 and 43 are rejected under 35 USC §102(b) as anticipated by Shimkets (U.S. Patent No. 6,013,630). In addition, claims 1 and 27 are rejected under 35 USC §103(a) as obvious over Shimkets (U.S. Patent No. 6,013,630) in view of Schipper *et al.* (1996) (Applicant notes that the Office Action refers to this publication by the author's first name, *i.e.*, Nicolaas *et al.* Applicant also notes that canceled claim 1 was included under this rejection; Applicant assumes, for purposes of this response, that the Examiner intended claim 13). The Examiner asserts that the Shimkets patent teaches a pharmaceutical composition comprising a nucleic acid sequence encoding a natriuretic hormone peptide comprising a glycine at the amino terminus position of the peptide (SEQ ID NO:1). The Examiner also asserts that the Shimkets patent teaches a nucleic acid (*e.g.*, SEQ ID NO:3) encoding the peptide, and vectors and host cells comprising the nucleic acid, as well as vectors that could be used as a therapeutic agent in a pharmaceutical carrier in gene therapy and delivered via liposome. Applicant respectfully traverses these rejections.

Applicant respectfully asserts that the cited references, taken alone or in combination, do not teach or suggest Applicant's claimed invention. However, by this Amendment, Applicant has amended independent claims 13, 28, 29, and 30 to incorporate the element of dependent claims 15, 44, 46, and 47, *i.e.*, the claims recite that the peptide comprises SEQ ID NO:5 (Applicant notes that claim 43 depends from claim 13). Applicant respectfully asserts that the Shimkets patent does not teach or suggest the amino acid sequence of SEQ ID NO:5. The Examiner acknowledges the same as claims 15, 44, 46, and 47 are not included under either rejection. Thus, Applicant respectfully asserts that the rejections of claims 13, 27, 28, 29, 30, and 43 have been rendered moot by the amendments presented herein. Accordingly, reconsideration and withdrawal of the rejections under 35 USC §102(b) and 35 USC §103(a) is respectfully requested.

In the Advisory Action dated September 8, 2008, the Examiner indicated that cancellation of claim 44 would raise a new issue under 35 USC §112, second paragraph. By this Amendment, Applicant has amended claim 45 to correct its dependency from canceled claim 44 to pending claim 28. Thus, Applicant respectfully asserts that an issue under 35 USC §112, second paragraph, does not arise with the cancellation of claim 44.

It should be understood that the amendments presented herein have been made solely to expedite prosecution of the subject application to completion and should not be construed as an indication of Applicant's agreement with or acquiescence in the Examiner's position.

In view of the foregoing remarks and amendments to the claims, Applicant believes that the currently pending claims are in condition for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 or 1.17 as required by this paper to Deposit Account 19-0065.

Applicant invites the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,



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Attachment: Request for Continued Examination